Supreme Court, U.S.
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No. 97-394

# In the Supreme Court of the United States

OCTOBER TERM, 1996

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BETTY BROWN AND ROGER BROWN,

*Petitioners,*

*v.*

UNIROYAL, INC. AND
UNIROYAL GOODRICH TIRE COMPANY,

*Respondents.*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit**

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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GEORGE D. DAVIS
*McKinney, Stringer & Webster, P.C.*
*101 North Broadway*
*Suite 800*
*Oklahoma City, OK 73102*
*(405) 239-6444*

KENNETH S. GELLER
EVAN M. TAGER*
MIRIAM R. NEMETZ
*Mayer, Brown & Platt*
*2000 Pennsylvania Ave., N.W.*
*Washington, DC 20006*
*(202) 463-2000*

**Counsel of Record*

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## QUESTION PRESENTED

Whether, in affirming the district court's summary judgment in petitioners' independent action alleging fraud on the court under Fed. R. Civ. P. 60(b), the court of appeals applied an improper legal standard.

## RULE 29.6 STATEMENT

Respondent Uniroyal, Inc., which was dissolved in 1986, has no parent or subsidiary companies. Respondent Uniroyal Goodrich Tire Company has been merged into Michelin North America, Inc. Michelin North America, Inc.'s parent company is Michelin Corporation, and its nonwholly owned subsidiaries are The Uniroyal Goodrich Tire Company (a New York general partnership) and Lexington Real Estate Holding Corporation.

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Petitioners have purported to identify a conflict among the courts of appeals regarding the proper standard for evaluating an independent action alleging fraud on the court under Fed. R. Civ. P. 60(b). The problem is that the issue as to which they claim a conflict was not the ground for the decision of the court of appeals. Accordingly, resolution of that issue would have not the slightest effect on the outcome of the case. Because this Court does not sit to issue advisory opinions, the petition for certiorari should be denied.

## STATEMENT

In 1986, Betty Brown was seriously injured at the tire plant where she worked when her arm was caught in a tire-making machine. Pet. App. A2. On January 14, 1988, she and her husband filed a negligence and products liability action in federal district court in the Eastern District of Oklahoma (*Brown I*) against two Canadian corporations, Uniroyal Goodrich

Canada, Inc. and Uniroyal Chemical Ltd./Uniroyal Ltee. ("the Canadian corporations"). *Id.*

On March 1, 1989, the Browns filed a motion under Fed. R. Civ. P. 15 to add Uniroyal, Inc. (one of the respondents) as a party defendant, alleging that Uniroyal, Inc. had been involved in the design of the machine. Pet. App. A3. The Canadian corporations opposed the motion, arguing that the two-year statute of limitations barred any claims against Uniroyal, Inc. and that adding a new defendant at such a late date would cause "needless delay" in the litigation. Pet. App. A3-A4.[1]

On May 2, 1989, the district court denied the Browns' motion to add Uniroyal, Inc. as a defendant. The court noted that the Browns' claims against Uniroyal, Inc. were time-barred unless saved by the "relation back" doctrine. *Brown* v. *Uniroyal Goodrich Canada, Inc.*, No. 88-20-C, slip op. at 1 (E.D. Okla. May 2, 1989). Under that doctrine, a claim asserted in an amended pleading that arises from the same conduct, transaction, or occurrence set forth in the original pleading is deemed to have been filed at the time of the original pleading. Fed. R. Civ. P. 15(c). As the court observed, the "relation back" doctrine applies to amendments asserting claims against a new party only if, among other things, "the party to be brought in [has] received such notice that it will not be prejudiced in maintaining its defense." *Brown* v. *Uniroyal Goodrich Canada, Inc.*, slip op. at 2 (internal quotation marks omitted). The district court concluded that the Browns failed to show that Uniroyal, Inc. had received the required notice of the original suit. *Id.* at 3.

On August 14, 1989, the district court entered summary judgment for the Canadian corporations and denied a motion to reconsider its decision not to permit the addition of Uniroyal, Inc. as a defendant. The Browns appealed both decisions, and

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[1] Uniroyal, Inc. did not itself file any papers opposing the motion.

the Tenth Circuit affirmed. *Brown* v. *Uniroyal Goodrich Canada, Inc.*, No. 89-7087 (10th Cir. Jan. 28, 1991).

About three years later, on March 28, 1994, the Browns filed an action (*Brown II*) in federal district court in the Eastern District of Oklahoma against respondents Uniroyal, Inc. and Uniroyal Goodrich Tire Co., as well as the Canadian corporations.[2] In relevant part, the action sought relief from the judgment in *Brown I* under the "savings clause" of Fed. R. Civ. P. 60(b) for "fraud upon the court."[3] The Browns alleged, among other things, that the defendants had deceived the court in *Brown I* when they claimed, in opposition to the Browns' Rule 15 motion, that Uniroyal, Inc. lacked notice of the suit and had no adequate opportunity to participate in discovery. Complaint at 6-8.

*Brown II* was assigned to Judge Seay. On defendants' motion, the case was reassigned to Judge Cook, the presiding judge in *Brown I*. After discovery, defendants moved for summary judgment. On January 25, 1995, Judge Cook granted summary judgment for the Canadian corporations on all claims, and granted partial summary judgment for Uniroyal, Inc. and Uniroyal Goodrich Tire Co. Pet. App. C22-C23. As to the latter defendants, the court left pending only the "claims to

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[2] The Browns filed *Brown II* after pursuing three unsuccessful state court cases — one alleging products liability claims against Uniroyal, Inc. and two alleging fraud claims against Uniroyal, Inc. and Uniroyal Goodrich Tire Co. See Pet. App. C21 n.8; *Brown* v. *Uniroyal, Inc.*, No. 78,396 (Okla. Ct. App. Mar. 9, 1993); *Brown* v. *Uniroyal, Inc.*, No. CJ-92-422 (Okla. Dist. Ct. Nov. 30, 1993); *Brown* v. *Uniroyal Goodrich Canada, Inc.*, No. CJ 93-7846 (Okla. Dist. Ct. June 10, 1994).

[3] Fraud on the court in the previous action is one of the very few available bases for relief under Rule 60(b) when more than one year has passed since entry of the judgment. Fed. R. Civ. P. 60(b).

reopen [*Brown I*] * * * in this court on account of the *allegedly false statements* made by defendants regarding notice to Uniroyal, Inc., and whether Uniroyal, Inc. had an adequate opportunity to participate in discovery *that were made in papers filed in opposition to the plaintiffs' motion to amend their complaint to add Uniroyal, Inc. as a party* * * *." *Id.* (emphasis added).

In granting partial summary judgment for Uniroyal, Inc. and Uniroyal Goodrich Tire Co., the district court ruled that only "fraudulent misrepresentations * * * made *to the court* in a manner that influences or attempts to influence the court's decisions" could constitute "fraud upon the court." Pet. App. C16-C17. The court thus dismissed certain allegations as involving fraud only between the parties. *Id.* at C17. The court then reviewed the remaining allegations, and found that all but two — the allegations that the defendants had misrepresented to the court that Uniroyal, Inc. lacked notice of liability and did not have an opportunity to participate in discovery in *Brown I* — were irrelevant, unfounded, or barred by *res judicata*. The court declined to grant summary judgment on these two allegations because outstanding discovery requests might affect their resolution. *Id.* at C20.

After additional discovery, the defendants renewed their summary judgment motion. On October 13, 1995, *Brown II* was reassigned back to Judge Seay. On December 19, 1995, Judge Seay granted the defendants' motion for summary judgment in its entirety, finding unfounded the two remaining allegations that the defendants had deceived the court in *Brown I*. The court stated that there was "nothing in the information submitted by the plaintiffs to show that the defendant Uniroyal, Inc., had any 'real notice' of any liability in plaintiffs' product liability lawsuit * * * or participated as a party in the discovery in that case." Pet. App. B4. The court found, to the contrary, that "it did not." *Id.* The court directly addressed the Browns' factual contentions, noting that "[t]he facts that Uniroyal, Inc., and/or Uniroyal Goodrich Tire Co., may have participated in a separate

discovery lawsuit * * * and/or provided legal assistance to the Canadian Uniroyal defendants in the products liability lawsuit * * * did not and does not provide notice of liability to them, or participation in discovery by them, in that lawsuit." *Id.* at B5. The court added that the materials submitted by the Browns in response to the renewed motion "fail[ed] to show any statement, representation, or concealment by these defendants which did, or would have improperly affected the impartial decisions of this court in its orders or judgment in this case," and showed no "intent by the defendants to deceive or defraud this court." *Id.* at B5-B6.

The Browns appealed Judge Seay's order and judgment of December 19, 1995 to the Tenth Circuit. The Browns *did not appeal* Judge Cook's earlier order and judgment, which had dismissed all claims except those against Uniroyal, Inc. and Uniroyal Goodrich Tire Co. alleging certain misrepresentations in connection with the Rule 15 motion.

In their brief in the Tenth Circuit, the Browns contended that Judge Seay had erred in concluding that the defendants lacked notice of the action in *Brown I.* Brief for Appellant at 18-28, 34-47, *Brown* v. *Uniroyal, Inc.*, 108 F.3d 1306 (10th Cir. 1997). They also argued that they were entitled to relief under Rule 60(b) for mistake or "other reason justifying relief." *Id.* at 29-34. The Browns never asserted that "fraud on the court" within the meaning of Rule 60(b) meant something other than misrepresentations directly to the court. Indeed, the Browns approvingly characterized Judge Cook's order, which had construed Rule 60(b) in that way in dismissing certain of their allegations, as "refining the issues and eliminating unnecessary parties." *Id.* at 47.

On March 17, 1997, the court of appeals affirmed Judge Seay's December 19, 1995 order. Expressly noting that only Judge Seay's order had been appealed, the court characterized the issue before it as "a very narrow one" — namely, whether Uniroyal, Inc. "fraudulently represented to the court" in *Brown*

*I* that it "would be prejudiced by being subjected to trial * * * without ever having had a direct interest in the investigatory and discovery process" and "had never received 'real notice' of the commencement of the action." Pet. App. A14. The court recounted that Judge Seay had "concluded that there was an insufficient showing by the Browns of any intent by Uniroyal, Inc., or any other entity for that matter, to deceive or defraud the court in Brown I," and stated briefly that it "agree[d]" with Judge Seay's conclusion. *Id.* at A14-A15.

After setting forth several Tenth Circuit decisions interpreting Rule 60(b), the court of appeals stated that Judge Seay "did not err in concluding that, on the basis of the record before him, the Browns did not demonstrate that Uniroyal, Inc., or Uniroyal Goodrich Tire Co., had committed a fraud on the court." Pet. App. A18. The court added that, "[a]s far as we can tell from the record before us, neither Uniroyal, Inc., or Uniroyal Goodrich Tire Co., the only appellees in the present proceeding, made *any* representation, as such, to the court in Brown I." *Id.* at A18-A19.[4]

## REASONS FOR DENYING THE PETITION

The Browns argue that this Court should grant certiorari to resolve a conflict among courts of appeals regarding the standard for finding fraud on the court in an independent action under Rule 60(b). The petition should be denied because the supposed defect in the Tenth Circuit's rule was not the basis for the court of appeals' decision in this case.

"While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial." *The Monrosa* v. *Carbon Black Export, Inc.*, 359 U.S. 180, 184

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[4] The petition for certiorari does not challenge this basis for the Tenth Circuit's judgment.

(1959). There is no "judicial" reason for resolving the circuit conflict asserted here, because that putative conflict was irrelevant to the Tenth Circuit's decision in this case.[5] Overturning the supposed error in the Tenth Circuit's interpretation of Rule 60(b) would provide no relief to the Browns.

The Browns argue that the Tenth Circuit's interpretation of Rule 60(b)'s savings clause is overly stringent because it excludes from the definition of "fraud on the court" types of misconduct by litigants and attorneys that, in other circuits, would constitute grounds for relief. According to the Browns, the Tenth Circuit "has taken the remarkable position that only judicial corruption is sufficient to present grounds for relief." Pet. 13; see also *id.* at 15 ("The Tenth Circuit limits the Rule to instances where the judicial officer has been corrupted or corruptly influenced."). A correct reading of Rule 60(b)'s savings clause, they argue, would encompass other types of misconduct, including "fraudulent discovery answers and pleadings." *Id.* at 19.

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[5] It is doubtful that there is even a real conflict among the circuits. As in the present case, the "narrow" view of fraud on the court articulated in the other Tenth Circuit cases cited by the Browns was pure dictum. The basis for the judgment in *Bulloch* v. *United States*, 763 F.2d 1115, 1121 (10th Cir. 1985), was simply that "all the information, data and witnesses were available to plaintiffs" in the first action. *Id.* at 1118. In *Robinson* v. *Audi Aktiengesellschaft*, 56 F.3d 1259, 1260 (10th Cir. 1995), cert. denied, 116 S. Ct. 705 (1996), the court denied relief because the alleged misstatements were not made with the requisite fraudulent intent. Thus, it is premature to conclude that the Tenth Circuit is in conflict with any other court. See *Keller* v. *Adams-Campbell Co.*, 264 U.S. 314, 318-320 (1924) (dismissing writ of certiorari as improvidently granted after concluding that statements of court of appeals that appeared to raise a conflict were dictum).

The type of conduct that the Tenth Circuit rule supposedly excludes, however, was not at issue in the court of appeals. The Tenth Circuit reviewed *only* Judge Seay's order, which considered *only* allegations that the Uniroyal defendants made false statements *to the court* in opposing the motion to add Uniroyal, Inc. as a defendant in *Brown I*. Pet. App. A13-A14. The court of appeals upheld the grant of summary judgment on these claims, not because the allegations fell outside the category of conduct qualifying as "fraud on the court," but because it agreed with the district court that the claims, which *might* constitute fraud on the court if true, were simply unsubstantiated. *Id.* at A14-A15. The court of appeals also relied on the independent ground that neither of the respondents actually made the representations at issue. *Id.* at A18-A19. Neither of these grounds for decision is challenged in the certiorari petition.

The Browns characterize the court of appeals' decision as "hold[ing] that nondisclosure in pretrial discovery did not support an action for 'fraud on the court' * * *." Pet. at 12. But the single statement in the opinion regarding discovery fraud is dictum, appearing in a block quotation from a prior Tenth Circuit decision. See Pet. App. A17. The court of appeals did not consider the Browns' allegations that the defendants committed fraud in discovery because such claims had been resolved by Judge Cook's January 25, 1995 order, which was not appealed.

The Tenth Circuit's supposedly narrow reading of Rule 60(b)'s savings clause, therefore, was not the basis for the court's decision. Even if this Court were to adopt the interpretation of Rule 60(b) for which the Browns argue, the decision of the court of appeals would stand.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

GEORGE D. DAVIS
*McKinney, Stringer & Webster, P.C.*
*101 North Broadway*
*Oklahoma City, OK 73102*
*(405) 239-6444*

KENNETH S. GELLER
EVAN M. TAGER*
MIRIAM R. NEMETZ
*Mayer, Brown & Platt*
*2000 Pennsylvania Ave., N.W.*
*Washington, DC 20006*
*(202) 463-2000*

**Counsel of Record*

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